



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/482,599	01/13/2000	Randy Kristopher Bower	CDS-0215	7220

7590 11/28/2001
Audley A Ciamporcero Jr Esq
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

EXAMINER

BEX, PATRICIA K

ART UNIT	PAPER NUMBER
----------	--------------

1743

DATE MAILED: 11/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/428,599

Applicant(s)

ROBINSON, CHRISTOPHER F.

Examiner

P. Kathryn Bex

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1 6) ☐ Other:

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4, drawn to a method of detecting failure in an automatic analyzer, classified in class 436, subclass 43.
 - II. Claims 5-11 and 14-15, drawn to a method of detecting failures in fluid metering device, classified in class 436, subclass 180.
 - III. Claims 12-13, drawn to a fluid delivery device, classified in class 73, subclass 864.02.
 - IV. Claim 16, drawn to a computer program, classified in class 700, subclass 266.
 - V. Claim 17, drawn to a computer useable medium, classified in class 711, subclass 4.

2. The inventions are distinct, each from each other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation. The claims of Group I are drawn to a method utilizing error detection measures and the claims of Group II are drawn to a method for detecting failures in fluid metering devices.

This relationship is applicable to Groups I and III; I and IV; I and V; II and IV; II and V.

The inventions as presently claimed in Group III to Group V are deemed to be independent inventions. The fluid delivery device feature of the claims of Group III are not

required by the claims of Group IV or Group V. Similarly, the computer program feature of the claim of Group IV is not required by the claims of Group III or Group V. The computer useable medium feature of the claim of Group V is not required by the claims of Group III or Group IV. None of the claims as presently written link together the inventions set forth in Group III to V.

Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as ink dispensing process.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and the search required for one group is not required for the others, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Todd Volyn on September 26, 2001 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

6. The drawings are objected to under 37 CFR 1.83(a) because they fail to show reference no. 175 in Figure 2B as described in the specification on page 10, line 22. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.

Claim Objections

7. Claim 1 is objected to because of the following informalities: the claim has two "c)" bullets, see lines 4 and 8 of the claim. Examiner believes the second "c)" should be changed to --e)--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 4-5, the limitation "clinically significant error", is vague and indefinite. What does Applicant consider "clinically significant", i.e. partial or complete failure of the system?

Line 9, the term "low" is a relative term which renders the claim indefinite. The term "low" is not defined by the claim, the specification does not provide a standard for

ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear as to what Applicant considers a "low" probability. This same reasoning is applicable to the term "acceptable". What does Applicant consider an "acceptable" limit?

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoth *et al* (USP 5,710,723).

Hoth *et al* teach an automated method and apparatus for performing pre-emptive maintenance on operating devices involved in the processing, transport and distribution of chemicals. The method of performing pre-emptive maintenance requires that sources of potential errors that can result in failures be identified, e.g. pumps, motors, pipes, transformers, etc. In a learn mode, the system collects data from operating equipment at periodic intervals via sensors. A failure probability calculation is performed in monitor mode, which compares the learned mode norms with monitor mode data obtained and a potential for failure is estimated. Next, data from a reference library is used to apply the appropriate maintenance action in order to keep the process operating without interruption. The system includes the use of a control processor employing linear programming process (column 3, line 47-column 4, line 35).

Art Unit: 1743

12. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Farmer (USP 5,315,529).

Farmer teaches an automated fluid vessel leak existence system method and apparatus. The method identifies the probability of a potential leak in a fluid storage tank or other containment device, including piping. Error detection measures, sensors, corresponding to the source of the potential leak are unitized within the system. A signal conditioner receives raw data from the sensors, this data is converted into a signal, which is sent to a statistical filter. The filter analyzer can determine the probability that a leak has occurred. Additionally, qualifying logic may be programmed to improve the accuracy of the leak detector by causing a monitor to ignore signals representing leak detection when certain conditions exist making a false leak detection likely (columns 3-8).

Conclusion

13. No claims allowed.

14. The prior art made of record and not relied upon which is considered pertinent to applicant's disclosure are Wegerich *et al* and Ferkinhoff *et al*. They are cited of interest in that they show various methods for detecting potential failures within an analytical system.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Bex whose telephone number is (703) 306-5697. The examiner can normally be reached on Mondays-Thursdays from 6:00 am to 3:30 pm EST.

The fax number for the organization where this application or proceeding is assigned is (703) 305-7718 for official papers prior to mailing of a Final Office Action. For unofficial or

Application/Control Number: 09/428,599

Page 7

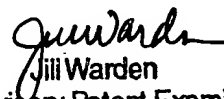
Art Unit: 1743

draft papers use fax number (703) 305-7719. Please label all faxes as official or unofficial. The above fax numbers will allow the paper to be forwarded to the examiner in a timely manner.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



P. Kathryn Bex
Patent Examiner
AU 1743
11/19/01



Jill Warden
Supervisory Patent Examiner
Technology Center 1700